

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6124 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT Sd/-

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1. Whether Reporters of Local Papers may be allowed
to see the judgements?

NO

2. To be referred to the Reporter or not? NO

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?
NO

EAGLE CEMENT PIPE & CONCRETE WORKS

Versus

DISTRICT COLLECTOR

Appearance:

MR PM RAVAL for Petitioner

MS PS PARMAR ADDL.GOVERNMENT PLEADER for

Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 23/10/96

ORAL JUDGEMENT

The Collector at Junagadh on 3rd October, 1984
rejected the application of the petitioner praying for
construction of the shops and letting the same to the
Bank. In revision, when the matter was carried, the
Secretary (Revenue) hearing revision rejected the same on
19th December 1984. Both these orders are under
challenge in this petition.

2. In short the case of the petitioner is that he wanted to launch his business venture in the name and style "Eagle Cement Pipe & Concrete Works" . He, therefore, applied for the allotment of the land for industrial use. Vide his order dt. 3rd January 1972, the Collector, on certain terms and conditions, allotted the land for industrial purpose. Thereafter the petitioner, who was put into the possession of Survey No. 42 Paiky and Survey No. 43 Paiky approximately admeasuring 7 Acres and 31 Gunthas. He was then using the land for the purpose for which it was allotted. A portion of the land remained open for quite a long time. The petitioner thought it fit to use the same by erecting shop and let the same to the Bank as the same in the area, for those who were running industries and commercial offices was necessary. For that purpose, the petitioner moved the Collector for according necessary sanction. The Collector, without hearing the petitioner, rejected the application and informed the petitioner about the same on 3rd October, 1984 by a letter a copy of which is annexed at Annexure F. Feeling aggrieved by the order, the petitioner filed a revision application before the Secretary (Revenue) which came to be rejected hearing the concerned on 19th December, 1984. In the result, the present petition is filed calling in question the aforesaid two orders.

3. It has been contended on behalf of the petitioner that the Collector, without hearing the petitioner, passed the order which was inconsistent with the principles of natural justice. The petitioner ought to have been heard. Had the opportunity to submit granted, the petitioner could have produced the necessary material convincing the Collector about the use of the land intended to be made.

4. A perusal of the orders goes to show that opportunity to submit was never given by the Collector. It is the cardinal principle of law that the party and the persons interested should be given a notice and an opportunity to submit their say in the matter. If that opportunity of being heard is not given and the party is condemned unheard, whatever order is passed must be held bad in law and cannot be allowed to stand. Even if the order on administrative side is passed, it must be in consonance with the Rules of natural justice. The authority exercising powers must be fair and just and cannot pass any order arbitrarily or capriciously. In this case, when the Collector did not care to afford an opportunity to submit and passed the impugned order, it

is nothing but capricious exercise of the power and whatever order is passed being bad in law, is required to be struck down.

5. Faced with such situation, learned AGP at this stage submits that when the revision application was heard, the opportunity to submit was granted and therefore whatever lacuna the Collector left behind while passing the order came to be cured and the petitioner's grievances did not then survive. The contention gains no ground to stand upon. In view of the decision of this court rendered in the case of Hasmukhbhai Dhanjibhai Zaveri Vs. R. Parthasarthy, 12 GLR 128 which is a direct answer to the submission made on behalf of the State. It is held:

"whenever the authority has to exercise the power, the same should be in judicial spirit keeping in mind the principles of natural justice. If the order is not passed in consonance with the rules of natural justice, and opportunity to submit is not given, it would amount to breach of the rules of natural justice and the order which is passed cannot be cured at later stage i.e. ex post facto by affording to the person affected thereby an opportunity to represent his case after the order at the proper stage is passed. An order made in breach of the principles of natural justice is void and an opportunity given to the affected person to represent his case after such an order is made cannot have the effect of resuscitating a still-born order. The fatal defect in the proceeding may be cured only if the authority passing the order, realising that it had acted hastily and arbitrarily, annuls its decision, proceeds to reconsider the whole matter afresh after affording to the person affected a reasonable opportunity to represent his case and arrives at a fresh decision."

In view of this decision, the contention raised cannot be allowed to stand.

6. When in this case, without affording an opportunity to submit, the order is passed, it is null and void ab-initio and the same is required to be struck down. The proper course which is made clear in the decision of Hasmukhbhai Dhanjibhai's case (supra) is that the defect can be cured by the authority who passed the order after hearing the matter afresh adhering to the

principles of natural justice. In view of the matter, the Collector is required to be directed to hear the petitioner afresh and decide his representation.

7. For the aforesaid reasons, the petition is allowed. The impugned order dt. 3rd October, 1984 passed by the Collector and the order dt. 19th December, 1984 passed by the Secretary (Revenue) in revision are hereby quashed and set aside. The respondent no.1 is hereby directed to hear the the petitioner's application dt. 30th July 1984 giving reasonable opportunity to submit his say and decide the same in accordance with law within a period of four months from today. No costs in the facts and circumstances of the case. Rule made absolute to the above extent. Direct service is permitted.
